

FILED

NOT FOR PUBLICATION

APR 23 2003

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON

U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,)	No. 02-50105
)	
Plaintiff-Appellee,)	D.C. No. CR-01-02075-BTM
)	
v.)	MEMORANDUM*
)	
MARIO OCHOA-GARCIA,)	
)	
Defendant-Appellant.)	
_____)	

Appeal from the United States District Court
for the Southern District of California
Barry T. Moskowitz, District Judge, Presiding

Argued and Submitted April 9, 2003
Pasadena, California

Before: BEEZER, FERNANDEZ, and PAEZ, Circuit Judges.

Mario Ochoa-Garcia appeals his conviction for being a deported alien found
in the United States. See 8 U.S.C. § 1326. We affirm.

While Ochoa raises three separate issues, each of them revolves around his

* This disposition is not appropriate for publication and may not be cited to or
by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

claim that he never entered the United States because he was under official restraint from the moment he stepped over the border to the time of his physical capture. See United States v. Gonzalez-Torres, 309 F.3d 594, 597-99 (9th Cir. 2002); United States v. Pacheco-Medina, 212 F.3d 1162, 1166 (9th Cir. 2000). We disagree. The record makes it plain that Ochoa was not under constant surveillance from the moment he came onto United States soil.¹ That means that he did manage to enter. See United States v. Hernandez-Herrera, 273 F.3d 1213, 1218-19 (9th Cir. 2001); United States v. Ramos-Godinez, 273 F.3d 820, 824-25 (9th Cir. 2001); United States v. Castellanos-Garcia, 270 F.3d 773, 775 (9th Cir. 2001); Martin-Plascencia, 532 F.2d at 1317-18.

Therefore, the indictment was not defective. See United States v. Lualemaga, 280 F.3d 1260, 1263 (9th Cir. 2002). Moreover, the evidence was sufficient to support the verdict. See Pacheco-Medina, 212 F.3d at 1163. Finally, the dearth of evidence of official restraint relieved the district court of any obligation to instruct the jury on that doctrine. See Castellanos-Garcia, 270 F.3d at 777.

AFFIRMED.

¹ Among other things, he was not seen as he entered and he did not even trigger a seismic sensor until he was 100 yards into this country. See United States v. Martin-Plascencia, 532 F.2d 1316, 1317 (9th Cir. 1976).